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|--|-------|---------------------------|
| STATE OF INDIANA |) | MARION COUNTY _____ COURT |
| |) SS: | |
| COUNTY OF MARION |) | CAUSE NO. _____ |
| NEWPORT BAY HOMEOWNERS ASSOCIATION, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| CERTAINTeED CORPORATION |) | |
| |) | |
| Defendant. |) | |

49C01 18 08 FILED 35 8 8

175 AUG 18 2010

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURTCOMPLAINT

Plaintiff, Newport Bay Homeowners Association, Inc., ("Newport Bay"), by counsel, hereby tenders its Complaint against CertainTeed Corporation ("CertainTeed"), and in support thereof states as follows:

1. Newport Bay is a corporation existing under the laws of the State of Indiana with its principal place of business in Marion County, Indiana.
2. CertainTeed is a foreign corporation with its principal place of business in Valley Forge, Pennsylvania.
3. CertainTeed regularly conducts business in the State of Indiana.
4. Newport Bay purchased WeatherBoards Fiber Cement Siding (the "Siding") manufactured by CertainTeed for its condominiums.
5. The Siding came with a fifty year limited warranty from CertainTeed (the "Warranty"). A true and accurate copy of the Warranty is attached as Exhibit "A".

6. Under the Warranty, CertainTeed promised to pay to repair, replace or refund the amount paid for any defective Siding.

7. The Siding Newport Bay purchased is defective in that it has significantly shrunk and has become unusually wavy, allowing rain, snow and ice to penetrate past the Siding and damage Newport Bay's condominium structures.

8. Newport Bay filed a warranty claim with CertainTeed, has followed all required procedures to process a warranty claim and has provided CertainTeed with all requested information.

9. Nevertheless, CertainTeed refused and continues to refuse to honor the Warranty and to pay to repair, replace or refund the amount paid for any defective Siding.

10. CertainTeed has breached the Warranty.

WHEREFORE, Newport Bay respectfully requests this Court enter judgment against CertainTeed in an amount to compensate Newport Bay for CertainTeed's breach of the Warranty, and for attorney's fees, court costs, pre and post-judgment interest, and for all other relief just and proper in the premises.

Respectfully submitted,


J. Chris Reininga, Atty. No 19536-49

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WEATHERBOARDS™
FIBER CEMENT SIDING
CERTAINTEED CORPORATION

50-YEAR
LIMITED

CertainTeed 

WARRANTY

CONGRATULATIONS! ... and thank you for your recent purchase of CertainTeed WeatherBoards™ Fiber Cement Siding. You can feel confident that you have made a wise decision buying from a company that is an industry leader and stands behind its products with strong warranty protection.

Since 1904, CertainTeed has been producing quality building products that provide long-lasting beauty and protection for homes of every size, style and age. In addition to fiber cement siding, CertainTeed offers roofing, vinyl siding, windows, fence, railing, trim, decking, foundations, pipe, insulation, gypsum and ceiling products. For over 100 years, the origin of our name continues to be our ongoing philosophy, "Quality made certain, satisfaction guaranteed."

LIMITED, PRORATED AND TRANSFERABLE WARRANTY

What and Who is Covered and for How Long

CertainTeed warrants to the original property owner/consumer that, when subject to normal and proper handling and use, and proper installation, its WeatherBoards Fiber Cement Siding primed with FiberTect® will be free from manufacturing defects during the 50-year period following its date of installation. Subject to the *Warranty Proration Schedule* on the back of this warranty, CertainTeed will pay to repair or replace, at its option, any WeatherBoards Fiber Cement Siding CertainTeed determines to be defective under the terms of this limited warranty. CertainTeed also reserves the right to refund the amount paid by the original property owner/consumer for the WeatherBoards Fiber Cement Siding (prorated as indicated in the *Warranty Proration Schedule*). Under no circumstances and in no event, however, will CertainTeed pay for or be liable for any labor charges or other expenses whatsoever in connection with the removal, repair or installation of either the original or replacement WeatherBoards Fiber Cement Siding, except as provided under SureStart™ protection described below.

WeatherBoards Fiber Cement Siding (but not the FiberTect sealer applied to the product) is warranted against damage from hail during the warranty period. In the event of hail damage, the property owner must first pursue costs of replacement or repair of hail-damaged WeatherBoards Fiber Cement Siding through homeowner's insurance or any other applicable insurance coverage. CertainTeed will reimburse the property owner for material costs in excess of the insurance contribution excluding any insurance deductible. CertainTeed will not, however, be responsible for the cost of any labor required to install or replace hail-damaged material.

All references in this warranty to WeatherBoards Fiber Cement Siding include any WeatherBoards Fiber Cement soffit or Fiber Cement 7/16" thick trim which is installed in conjunction with the original CertainTeed WeatherBoards Fiber Cement Siding.

In the event of repair or replacement under the terms of this warranty, the original warranty will apply to the repaired or replaced material and will extend for the balance of the warranty period in effect at the time CertainTeed determines the WeatherBoards Fiber Cement Siding is defective.

SureStart™ Protection

CertainTeed WeatherBoards Fiber Cement Siding products are covered by SureStart protection. Under this warranty feature, CertainTeed will pay to repair or replace, at its option, any WeatherBoards Fiber Cement Siding CertainTeed determines to be defective during the two-year SureStart period, unless CertainTeed elects to pursue its refund option as described above. The SureStart period begins on the date of installation and terminates at the end of the two-year period as shown on the back cover.

CertainTeed's maximum liability under SureStart will be equal to the reasonable cost to repair or replace the defective material at current value, including labor in connection with removal, repair or installation of either the original or replacement WeatherBoards Fiber Cement Siding.

If during the SureStart period a topcoat is applied and the WeatherBoards Fiber Cement Siding on which it is applied is determined to be defective, *not as a result of a topcoat failure*, then CertainTeed will pay the cost for the coating at current value, plus labor to apply the topcoat, such labor *not* to exceed a total cost of \$1 per square foot.

If the FiberTect sealer is determined by CertainTeed to be suffering from yellowing or from cracking, flaking, chalking or erosion from the surface then CertainTeed will pay the reasonable cost to repair or replace the FiberTect sealer (and the topcoat if one is applied) at current value, including labor in connection with removal, repair or installation of either the original or replacement sealer (and the topcoat if one is applied), such labor *not* to exceed a total cost of 75 cents per square foot.

If CertainTeed has agreed to pay labor charges per the terms of this Limited Warranty, CertainTeed will provide reimbursement only upon receipt of a copy of the installation or application contractor's invoice or other written evidence of the completion of such work which CertainTeed, in its sole discretion, deems reasonable or acceptable.

Transferability

This Limited Warranty is transferable, but only by the original property owner/consumer to the first subsequent property owner. Warranty transfer is effective on the date of real estate title transfer. The duration of the warranty, measured from the date of original installation, will remain the same for the subsequent property owner as for the original property owner/consumer and will be prorated as indicated in the *Warranty Proration Schedule*. If transferred during the SureStart period, however, SureStart Protection will automatically terminate, and the duration of the warranty, measured from the date of installation, will apply and will be prorated as indicated on the *Warranty Proration Schedule*. Any remaining period of SureStart protection at the time of transfer will *not* be available to the subsequent property owner. The subsequent property owner *cannot* transfer this Limited Warranty to any other subsequent property owner.

Limitations

This Limited Warranty does not provide protection against and CertainTeed will have no liability for any failure, defect or damage caused by circumstances and events beyond normal exposure conditions and/or beyond CertainTeed's control, including, but not limited to:

- Improper transportation, handling or storage of the WeatherBoards Fiber Cement Siding by either the installer or the property owner, including but not limited to: failure to keep the material dry, improper drainage, exposure to standing water, inadequate ventilation, excessive stacking weight, or otherwise causing moisture damage, surface contamination, surface defects, efflorescence, chalking or other damage.
- Failure of either the installer or the property owner to provide reasonable and necessary maintenance to the WeatherBoards Fiber Cement Siding before, during or after its installation, including but not limited to: abrasions from rubbing, scratching, dents, dings or other causes; damage caused by ladders, scaffolding and other job site tools.
- Use of accessories that do not properly receive and/or secure WeatherBoards Fiber Cement Siding.
- Improper installation or installation not in accordance with CertainTeed's written instructions to place at the time of the original installation of WeatherBoards Fiber Cement Siding.
- Defects in, failure of, or damage to the wall or substrate on which the WeatherBoards Fiber Cement Siding is installed caused by movement, distortion, cracking or settling of the wall or substrate or the foundation of the building.
- Discoloration, stains or other damage arising from exposure to outside sources such as, but not limited to, salt spray, air pollution (including metallic oxides or metallic particles), harmful chemicals, mold or mildew growth. *(Mold and mildew are functions of environmental conditions and are not manufacturing defects. As such, they are not covered under this Limited Warranty or any implied warranty.)*
- Impact of foreign objects, fire, earthquake, flood, lightning, hurricane, tornado or other casualty or act of God over which CertainTeed has no control.
- Primer, sealer, paint or other coating applied over the WeatherBoards Fiber Cement Siding by the property owner or third party that is not recommended or supplied by CertainTeed, regardless of compliance with the primer, sealer, paint or coating manufacturer's recommended application techniques or specifications. (Concerns with the primer, sealer, paint or coating should be addressed to the manufacturer of that product.)
- Improper coating that causes the WeatherBoards Fiber Cement Siding to fail.
- Deterioration of the FiberTeci sealer, including but not limited to yellowing or cracking, flaking, chalking or erosion from the surface, occurring more than two (2) years following original installation of the WeatherBoards Fiber Cement Siding. (CertainTeed installation instructions require a top coat to be applied within two (2) years following the original installation of WeatherBoards Fiber Cement Siding.)
- Vandalism or acts of war.
- Any other cause not a result of a manufacturing defect in the material supplied by CertainTeed.

CertainTeed reserves the right to discontinue or modify any of its products, including the color, without notice to the property owner, and CertainTeed will not be liable in the event replacement material varies in color or gloss in comparison to the original material as a result of normal weathering. If CertainTeed replaces any material under this warranty, CertainTeed may substitute products designated by it to be of comparable quality or price range if the original material has been discontinued or modified.

What the Customer Must Do

If you believe you have a manufacturing defect covered under the terms of this Limited Warranty, you must promptly notify CertainTeed and provide proof of the date of purchase and installation of the WeatherBoards Fiber Cement Siding, as well as confirmation of property ownership. Unless you provide such proof, CertainTeed will use the date of manufacture as the start of the warranty period. In order for CertainTeed to process your warranty claim, you must provide a detailed written description of the problem and photographs showing the reason for the claim, sufficient for CertainTeed to act on the claim. Upon receipt of a properly reported claim, CertainTeed will evaluate the claim and if a defect covered under the terms of this Limited Warranty is confirmed, CertainTeed, within a reasonable amount of time after review and evaluation, will pay to repair, replace or refund the property owner in accordance with the terms of this Limited Warranty. In order to properly evaluate and process a claim, CertainTeed may require the property owner to submit a sample of the material claimed to be defective to CertainTeed for analysis and/or at CertainTeed's request, may require the property owner to arrange for and provide access to the property on which the material is installed, to the extent necessary, for a CertainTeed representative to inspect, take photographs and/or samples if required.

Warranty Registration Information

Failure to register this warranty will not void the warranty or any of its terms.

All written notifications and correspondence should be sent to:

CertainTeed Corporation, Attention: Warranty Claims, 803 Belden Road, Jackson, MI 49203.

Claims may also be initiated by calling CertainTeed at 1-800-999-3654 or through CertainTeed's website - www.certainteed.com.

Warranty Proration Schedule

| Number of Years of Use Obtained After Installation | CertainTeed's Prorated Share of Warranty Obligation |
|--|---|
| 0-2 years | 100% |
| 3-50 years | 2% reduction each year of purchase price of Fiber Cement Siding since date of original installation |

Limited Warranty and Limitation of Remedies

THIS DOCUMENT CONSTITUTES THE EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CERTAINTEED. THE WARRANTIES AND REMEDIES CONTAINED IN THIS DOCUMENT ARE EXPRESSLY IN LIEU OF ANY AND ALL OTHER OBLIGATIONS, GUARANTEES AND WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED BY STATUTE OR AT LAW. STATE OR PROVINCIAL LAW WILL DETERMINE THE PERIOD OF TIME FOLLOWING THE SALE THAT A PROPERTY OWNER MAY SEEK A REMEDY UNDER THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CERTAINTEED'S OBLIGATIONS, RESPONSIBILITIES AND LIABILITY SHALL BE LIMITED TO REPAIRING, REPLACING OR REFUNDING THE DEFECTIVE PRODUCT AS SET FORTH IN THIS LIMITED WARRANTY. IN NO EVENT SHALL CERTAINTEED BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ANY DAMAGE TO THE PROPERTY, THE BUILDING OR ITS CONTENTS, OR FOR INJURY TO ANY PERSONS, THAT MAY OCCUR AS A RESULT OF THE USE OF CERTAINTEED'S PRODUCTS OR AS A RESULT OF THE BREACH OF THIS LIMITED WARRANTY. IF YOUR STATE OR PROVINCE DOES NOT ALLOW EXCLUSIONS OR LIMITATIONS OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL CERTAINTEED'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE PRODUCT(S) OR THIS LIMITED WARRANTY EXCEED THE ORIGINAL PURCHASE PRICE OF THE PRODUCTS AND THE LABOR COSTS RELATING TO THE ORIGINAL INSTALLATION OF SUCH PRODUCTS.

This Limited Warranty may not be modified, altered or expanded by anyone, including product distributors, dealers, sellers, installers and/or CertainTeed field representatives.

This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from State to State or Province to Province.

This Limited Warranty applies to WeatherBoards Fiber Cement Siding installed on or after 4/1/10. (The warranty in effect at the time the material is originally installed is the applicable warranty).

All payments made by CertainTeed pursuant to this Warranty are in U.S. dollars.

ASK ABOUT OUR OTHER CERTAINTEED PRODUCTS AND SYSTEMS:

EXTERIOR: ROOFING • SIDING • WINDOWS • FENCE • RAILING • TRIM • DECKING • FOUNDATIONS • PIPE
INTERIOR: INSULATION • GYPSUM • CEILINGS

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